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LEGISLATION IN VIRGINIA REGULATING THE ENROLLING AND TRAINING OF THE MILITIA.

COLONIAL ORGANIZATION.

THE long period which has intervened since the people of the United States were compelled to exert their full power in waging a war in which the vital interests of the nation were endangered has served in some measure to obliterate from memory the military organization which was introduced into the colonies as an integral part of the political institutions of the Anglo-Saxon people. The idea of universal liability to service in the militia is as old as the English Constitution. The assizes and county courts of medieval England served not only as judicial and local legislative meetings, but were musters of the county militia to which each freeholder must come armed, and prepared to show his readiness to defend his country in case of danger. He could no more neglect his duty at the muster than he could refuse to do his duty as a citizen on the jury.

This system was brought by the colonists to their settlement at Jamestown. In 1671 Sir William Berkley, then Governor, in answer to certain interrogatories addressed to him by the Lord Commissioners of Foreign Relations described the militia forces as follows:¹

“What numbers of horse and foot are within your Government, and whether they be trained bands or standing forces?”

“Answer. All our freemen are bound to be trained every month in their particular counties, which we suppose and do not much mistake in the calculation are near eight thousand horse: There are more but it is too chargeable for poor people as we are to exercise them.”

Since in the same report the total population of Virginia including indentured servants and negroes is put at 40,000 souls, it will appear that for poor people the colonists were doing well.

¹ 2 Hen. Stat. 512.

Attendance upon the exercise or muster of the militia was strictly enforced, or at least failure to attend was punished by a fine of one hundred pounds of tobacco.² Not only was attendance compulsory, but the militiaman was required to furnish himself with arms, at his own expense. Every man able to bear arms was required to have in his house "a flint gun, two pounds of powder and eight pounds of shot," and for failure to do so was subject to a fine of fifty pounds of tobacco.³ In addition to this, troopers were compelled to furnish themselves with "a good, able horse, saddle, and all arms and furniture fit and compleat for a trooper."⁴ By this same act, in order to encourage the militia to keep the required equipment, the necessary arms were made exempt from levy or distress, a provision, which, copied from code to code, still remains a part of our Poor Debtor Law. The above mentioned moderate list of equipment was only for the better settled districts. By act of December 25th, 1700,⁵ special companies of militia were raised to settle on the frontier and in these unsettled districts "every warlike Christian man" was required to "be continually provided with a well fixed musquette or fuzee, a good pistoll, sharp simeter, tomahawk, and five pounds of good, clean pistoll powder, and twenty pounds of sizable leaden bullets."

In 1705, the various acts regulating militia service were combined into one.⁶ This act provided that the colonel, or chief of militia, should list every male from 16 to 60 years old within his county to serve in the horse or foot as he (apparently the colonel) should think fit. The persons so listed were to be disposed into companies and troops. These divisions were on geographical lines so that a company was composed of all of the enrolled militia in a specified neighborhood. Each company was to be mustered at least once a quarter, and the militia of the whole county was to be mustered at least once a year. This plan was little different from the plan which had prevailed from the time of the first settlement, and in turn the act above quoted was the basis of all subsequent acts until the whole militia system was

² Act of June 5, 1666; 2 Hen. Stat. 246.

³ 1 Hen. Stat. 52.

⁴ 3 Hen. Stat. 13.

⁵ 3 Hen. Stat. 204.

⁶ 3 Hen. Stat. 335.

abandoned just after the War between the States. The State was at all times divided geographically into districts, each of which formed a militia unit. The county generally furnished a regiment, though in later years the larger counties might form two regiments. Regimental musters were held once a year, or, under later acts, twice a year, and company musters once a quarter, or, for a time during and just after the Revolution, once a month. The counties were further arranged into brigades and divisions, but there never appears to have been any attempt to muster any unit larger than a regiment. Service under these acts was practically universal; government officials, students and professors of William and Mary College, ministers of the gospel, school masters and overseers having more than four slaves under them were exempt; but these were compelled to keep arms, and by Act of Dec. 5th, 1722,⁷ were required to furnish substitutes. In the act of Aug. 1st, 1733,⁸ exemption is extended to Quakers; but in later acts they were compelled to furnish substitutes, and each society of such people was made jointly liable to furnish substitutes for all of their members called for active service. No pay was allowed for attending musters; but, as attendance seems to have been required for only one day and so entailed little or no interruption of regular duties, this was probably never felt as an inconvenience. When in active service, if kept out more than six days, the militia was paid as were regular troops.⁹

DRAFTING FROM THE MILITIA FOR SPECIAL SERVICE.

Service in the militia was universal and compulsory, but for active service or special service a combination of the volunteer and draft systems was usually employed. The act last quoted above provided for the raising of four troops of horse to guard the heads of the four rivers, James, York, Rappahannock and Potomac. These companies were to constitute a permanent force, and were to be enrolled by volunteer enlistment if possible, but if a sufficient number of volunteers were not obtained, then by draft. The act, however, does not state how this draft

⁷ 4 Hen. Stat. 118.

⁸ 5 Hen. Stat. 17.

⁹ Act of April 6, 1684; 3 Hen. Stat. 17.

was to be made. It prescribes only that, "His Excellency, the Governor, and in his absence the commander-in-chief for the time being, is desired (upon application to him made by the captain of each troop) to issue forth his warrant for the raising soe many men (armed and appointed as aforesaid) as shall be wanting to compleat the number of thirty men by this act appointed." Inasmuch as the Governor, as commander-in-chief, had power to call out any of the militia, the statute seems to have implied, that he could in his warrant direct how these companies were to be filled up. By Act of March 25th, 1756,¹⁰ provision was made for raising a regiment to protect the frontier. This force was to be raised by requiring all able-bodied single men in the militia to appear at the court house of each county on a day named by the militia officers of the county, and then as many as would voluntarily enroll should be accepted for service, but if a number equal to one-twentieth of the enrolled militia did not volunteer, the deficit was to be met by drawing lots, every man so drawn being obliged to serve or furnish 10 pounds to provide a substitute in his stead. Failure to appear for the lot-drawing made the person so failing liable to immediate induction into the service. The men drafted were to serve until the 1st of December next, and paid as were regular troops in the service of the colony.

Besides these troops raised for special protection to certain districts, or for use in times of war with the French and Indians, some use was made of the militia as special police. Each company was required to detail certain of its members, usually an officer and a squad of men to patrol the district, and especially places frequented by negroes and disorderly persons. These patrollers were in fact the only county police force, and their efficiency seems to have made such an impression that they still live under the name of "paterollers" in the tales of the older negroes.

The Convention of Delegates of the Counties and Corporations of the Colony of Virginia which met in 1775, provided for the raising of a special class of militia to be known as Minute Men. These special militia companies were to be armed

¹⁰ 7 Hen. Stat. 9.

and equipped at the public expense, and were to be trained twenty days in general muster, and then for a period of four days in each month, except December, January and February. The State was, for the purpose of raising these special militia companies, divided into sixteen districts, each of which was required to raise a regiment of five hundred, except that Accomac and Northampton, which together formed one district, were to raise a regiment of six hundred and eighty. After serving one year, the Minute Men were to be discharged into the general militia. During the year that followed, however, the Minute Men seem to have enlisted in the Continental service in such numbers that it was found impossible to keep the commands up to effective strength, and they were accordingly disbanded.

The calls made by the Continental Congress upon Virginia for troops were usually met by drafts, at least if volunteers did not come forward fast enough. By Act of Oct. 7th, 1776,¹¹ it was provided that the quota of troops to be furnished by the State should be apportioned among the several counties, and if sufficient volunteers were not obtained, the magistrates and field officers of the militia were to select from the militia rolls the men who could be best spared. Later, in order to maintain its quota, the General Assembly ordered a draft of one-fifteenth of the militia for service with the Continental Army. In this draft the quota was first apportioned among the several counties and corporations, then each county was divided into as many districts as there were men to be drafted, and each district was compelled to raise one man, either a volunteer or a man chosen by lot from the militia. These divisions or districts were laid out geographically, and if possible were to be so laid out that the assessed property in each was approximately equal to that in any other. The hiring of substitutes seems to have been usual, if not universal, and the object of this last provision was to equalize as near as might be the burden of paying the substitute.¹²

USE OF THE MILITIA.

During the Colonial period, the Governor, as commander-in-

¹¹ 8 Hen. Stat. 198.

¹² 10 Hen. Stat. 258.

chief, seems to have had authority to embody the militia for service whenever he thought fit, but doubtless it was assumed that this power would be used only to resist insurrection or repel invasion, as this was the accepted limitation on the power of the Crown in England. Certainly, none of the militia, neither by general nor special draft, seems to have been sent beyond the borders of the colony prior to the Declaration of Independence; and in the act raising troops by drafting from the militia for service in the French and Indian War in 1756, it is expressly provided that the drafts so raised shall not be taken beyond the borders of the colony. By Act of May 22nd, 1740,¹³ provision was made for raising recruits for foreign war by pressing into the King's service "such able-bodied men as do not follow or exercise any lawful calling or employment, or have not some other lawful and sufficient support and maintenance." This act, however, seems rather intended to rid the colony of undesirable inhabitants than to be a part of the legislation for regulating the militia.

During the Revolution, the militia was upon occasion sent beyond the State borders. The drafts raised as described above were of course for service with the Continental Army in any of the colonies, and in addition to this, by Act of Oct. 4th, 1779,¹⁴ the Governor was given express power to send the militia of the State, not exceeding 1,500, out of the State to the aid of South Carolina. By later act¹⁵ this number was raised to 20,000. These militia, under their own officers, were later dispatched by Thomas Jefferson, then Governor, to resist Cornwallis's advance.

MILITIA TRAINING UNDER THE FEDERAL SYSTEM.

The adoption of the Federal Constitution necessarily meant that thereafter the militia of the several States would be used, in time of war, as one force, or at least, subject to the control of one head; but the jealousy of the States, however, prevented a full surrender of the power of training the militia to the Federal Government. Congress, in 1792, attempted to provide

¹³ 5 Hen. Stat. 94.

¹⁴ 10 Hen. Stat. 214.

¹⁵ 10 Hen. Stat. 312.

for a uniform system of organization and training; and Virginia put the plan proposed by Congress into effect in this State.¹⁶ This system did not differ materially from that already in force. Every able-bodied man from 18 to 60 years was enrolled. The State was divided into four districts, each to constitute a division of militia, consisting of four brigades, which were further subdivided into regiments and companies. Assignment to a company, and the whole plan of organization was geographical. That is, all the men in a given district of a county constituted the militia company for that district. The field officers were elected by the General Assembly, and the line officers were appointed by the Governor upon the recommendation of the County Courts.

Officers of each brigade were required to meet for two days' training at least twice a year, company musters were held every three months, battalion musters in May, and regimental musters in February each year. No muster of brigades or divisions was held. Indeed, from the nature of the case, these would have been impossible, as it would have meant the assembly of all the able-bodied men of several counties. This system continued in effect until the War between the States. However, it seems from references in various acts that it was often little more than a dead letter. The system could never have been made very effective, as it was too unwieldly to be practicable. A call for the militia brought out all the men of a district, and no attempt was made at arranging men of different ages into different classes. Naturally, the militia organized on these lines could not be called except upon sudden emergency, and for a short period of time. Later some attempt was made to meet this difficulty by dividing the militia into classes each containing ten per cent. of the militia of a given district, and so call out ten per cent. for active service at a time; but this division into classes seems to have been done by lot, and not with any respect for age or fitness, and the plan also resulted in bringing ten per cent. of each company into service, so that the units were broken up, and new units had to be formed after the men were called into service.

¹⁶ 13 Hen. Stat. 340.

VOLUNTEER COMPANIES OF MILITIA.

The difficulties of the system pointed out above seem to have been early recognized, and an attempt to meet them was made by the formation of a special militia composed of volunteers. The Minute Men were the first instance of this plan; but these were soon abolished. The Act of Oct. 18th, 1784,¹⁷ provided that there should be attached to each battalion of militia a light company of infantry composed of such men from 18 to 25 years, "whose activity and domestic circumstance will admit of a frequency of training not practical for the militia in general." In the following year it was provided¹⁸ that these light companies should drill at least twice in every three months and that uniforms and equipment should be voluntary. The plan of the light companies of special militia was carried further by the Act of 1792, quoted above. This act provided for raising by voluntary enlistment a company of riflemen, light infantry, or grenadiers for each regiment, and a company of cavalry, and one of artillery for each brigade. Their officers were to be appointed by the Governor. Later these companies were given the right to adopt by-laws not inconsistent with general law, and to elect their own officers.¹⁹ After seven years' service in these special companies a militiaman was exempt from service in the general militia. These companies, of course, were the forerunners of the organized militia which exists today—or did exist until the outbreak of the present war called its members into service as a part of the national forces. In the beginning they were intended to serve as special troops strengthening, but not displacing, the general militia composed of the entire body of the able-bodied men of the State; but it would seem from recitals in the various acts that the general militia laws were not well observed, and that musters if held at all were little more than inspections and afforded no valuable training. At the close of the War between the States the whole plan of universal enrollment was abandoned. Doubtless the whites viewed with anxiety any plan of organization of the militia that would serve as a means of bringing the negroes together in arms; and the

¹⁷ 11 Hen. Stat. 477.

¹⁸ 12 Hen. Stat. 1.

¹⁹ Act of June 28, 1800; 1 Rev. Code, 1803, p. 400.

negroes and their white leaders did not look forward with composure to a muster of white militia composed largely of Confederate veterans. In any event the constitution, adopted upon Virginia's readmission into the Union, provided:

"The militia of this State shall consist of all able-bodied male persons between the ages of 18 and 45 years, except as may hereafter be exempted by the laws of the United States or of this State; but those who belong to religions whose tenets forbid them to carry arms, shall not be compelled to do so, but shall pay an equivalent for personal service, and the militia shall be organized and trained as the General Assembly may provide by law.

"The Legislature shall provide by law for the encouragement of volunteer corps of the several arms of the service, which shall be classed as the active militia; and all other militia shall be classified as the reserve militia, and shall not be required to muster in times of peace."

The above provision was not carried forward to the present constitution, but it is in substance embodied in § 300 of the Code of 1904.

PRESENT NEEDS.

The old militia system, for the reasons pointed out above, was never apparently efficient. Certainly, when called into active service in the Revolutionary War or in the War of 1812, it did not prove itself a valuable defense. This was due in part to the fact that it was never trained sufficiently. The old musters afforded little if any training, and no attempt was made to call it into service for any long period in order that it might undergo systematic and thorough discipline.

After the Revolution some plan of universal training would probably have been found that would have answered the country's needs; except for the fact that the condition of the country did not seem to indicate that we would ever need any land force larger than a small army able to cope with Indians on our frontier, or at most with Mexico.

The Constitution of the United States had unfortunately divided the control of the militia between Congress and the several States. To the former was given the power to provide for organizing, arming and disciplining the militia, and for govern-

ing such part of them as might be employed in the service of the United States; but to the States was reserved the power of appointment of the officers, and authority of training the militia according to the discipline prescribed by Congress. This meant that the State would have the expense of training forces that could only be of benefit in a matter affecting all the States. Naturally each State felt that if it raised volunteer companies as described above, these companies would more than meet its needs for police purposes, and that if in addition it expended money on its general militia it was bearing a burden that should have been borne by the nation.

It seems now evident that after the present war we shall have to take our choice between a large army of volunteer soldiers, or some system of universal training. The former plan is at variance with the tradition of the people, while the latter, although not used in the last generation, is the old and established plan, sanctioned and approved by the founders of the Republic.

The Virginia Declaration of Right, which now forms a part of the State Constitution as the Bill of Rights, declares:

"A well regulated militia composed of the body of the people trained to arms, is the proper, natural, and safe defense of a free state."

Any plan embodying this principle to be valuable today must be national in scope rather than an affair for the several States; and, since the section of the Constitution of the United States mentioned above²⁰ seems to stand in the way of complete control of the militia in times of peace by Congress, it is probably necessary to amend it and confer full authority upon Congress to provide for arming, training and calling out the militia, so that in the future our national forces may be systematically trained, as they reach military age, and when trained retired to the reserve militia to be called on in time of war, or other emergency.

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²⁰ Section 8, clause 15.